

THE HONORABLE EDWARD F. SHEA

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ALBERT M. ZLOTNICK,)	
)	
Plaintiff,)	No. CV-04-140-EFS
)	
v.)	DECLARATION OF MATTHEW
)	J. MACARIO IN SUPPORT OF
WORKLAND & WITHERSPOON,)	PLAINTIFF'S MOTION TO
PLLC, GREGORY LIPSKER and JANE)	COMPEL DISCOVERY
DOE LIPSKER, and the marital)	
community comprised thereof,)	
)	
Defendants.)	
)	

I, Matthew J. Macario, declare as follows:

- I am a member of the law firm of Lane Powell PC, attorneys for plaintiff Albert M. Zlotnick in this action. I have personal knowledge of the matters asserted herein and am otherwise qualified to testify.
- On or about January 26, 2005, my office served two separate sets of discovery upon the defendants via e-mail and first-class United States mail: (1)

1 Plaintiff's First Interrogatories and Requests for Production of Documents to
2 Defendant Workland & Witherspoon, PLLC; and (2) Plaintiff's First Interrogatories
3 and Requests for Production of Documents to Defendants Gregory Lipsker and Jane
4 Doe Lipsker. True and correct copies of both sets of discovery, along with the
5 transmittal letter I sent to defense counsel on January 26, 2005, are attached as
6 **Exhibit "A"** to this Declaration.

7 3. Defendants did not respond to plaintiff's discovery requests in a timely
8 manner. Defense counsel has never asked me for an extension of time to respond to
9 plaintiff's discovery requests. For weeks and perhaps months, plaintiff's counsel
10 (Matt Macario and Jim Stoetzer) attempted to contact defense counsel (Jim King) on
11 multiple occasions to discuss the overdue discovery and related issues, without
12 success. Requests to speak with other attorneys in Mr. King's office were refused. At
13 this point, plaintiff's counsel began sending letters to Mr. King in an attempt to
14 discuss the discovery matters. Those letters, described below, are attached to this
15 declaration. To date, no written reply to any of these letters has been received.

16 4. Attached as **Exhibit "B"** to this Declaration is a true and correct copy of
17 a letter sent by plaintiff's counsel (Jim Stoetzer) to defense counsel (Jim King) via
18 facsimile and U.S. mail on February 16, 2005.

19 5. Attached as **Exhibit "C"** to this Declaration is a true and correct copy of
20 a letter sent by plaintiff's counsel (Jim Stoetzer) to defense counsel (Jim King) via
21 facsimile and U.S. mail on March 10, 2005.

22 6. Attached as **Exhibit "D"** to this Declaration is a true and correct copy of
a letter sent by plaintiff's counsel (Matt Macario) to defense counsel (Jim King) via
facsimile and U.S. mail on March 23, 2005.

1 7. On March 30, 2005, I finally succeeded in my efforts to speak with Mr.
2 King by telephone regarding the overdue discovery and related issues. During this
3 telephone Rule 37 conference, Mr. King agreed to provide defendants' answers to
4 plaintiff's discovery requests prior to the scheduled April 5, 2005 hearing date on
5 Defendants' Motion to Continue Trial Date. Attached as **Exhibit "E"** to this
6 Declaration is a true and correct copy of a letter I sent to Mr. King on April 1, 2005,
7 confirming the agreements reached during our March 30, 2005 Rule 37 conference.

8 8. The defendants did not provide plaintiff with their discovery responses
9 by the April 5, 2005 date promised by Mr. King. On April 19, 2005, I attempted to
10 contact Mr. King by telephone to discuss the overdue discovery. Mr. King was not
11 available, so I left a message with his assistant requesting a return call. Mr. King did
12 not return the message. Accordingly, on April 20, 2005, I sent another letter to Mr.
13 King advising that plaintiff would move to compel if we did not receive defendants'
14 discovery responses by close of business the following day. A true and correct copy
15 of this letter is attached as **Exhibit "F"** to this Declaration.

16 9. To date, defendants' responses to plaintiff's interrogatories have not been
17 received. The defendants have also failed to respond to plaintiff's requests for
18 production of documents. These discovery requests are now approximately three
19 months overdue.

20 10. Pursuant to Fed. R. Civ. P. 37(a)(2)(B), I hereby certify that I have in
21 good faith conferred and attempted to confer with counsel for the defendants in an
22 effort to secure the discovery responses and document production without court
action. I believe that an award of \$2,500.00 is appropriate to reimburse Mr. Zlotnick
for the attorneys' fees and costs he has incurred by being forced to bring this motion.

1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.

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4 SIGNED and DATED in Seattle, Washington, this 22nd day of April 2005.

5 s/ Matthew J. Macario
6 Matthew J. Macario
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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2005, I electronically filed the foregoing *Declaration of Matthew J. Macario* to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

James B. King, Esq.
Keefe, King & Bowman, P.S.
601 W. Main, Ste. 1102
Spokane, WA 99201-0625

s/ Matthew J. Macario
Matthew J. Macario